Salihudin bin Hj Ahmad Khalid & Ors v Pendaftar Pertubuhan Malaysia & Anor

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO W-01(IM)-301–05 OF 2018
BADARIAH SAHAMID, KAMARDIN HASHIM AND ZABARIAH MOHD YUSOF JJCA
12 NOVEMBER 2019

Civil Procedure — Jurisdiction — Justiciability of issue — Registrar of Societies ('ROS') allowed political party extension of time ('EOT') to hold its elections at all levels — EOT extended time specified in party's constitution for holding of elections — Members of party applied for leave to file judicial review application to quash ROS' decision and compel ROS to dissolve party and suspend all its activities — Whether court had no jurisdiction to hear applicants' case — Whether s 18C of the Societies Act 1966 ousted court's jurisdiction to hear any matter concerning affairs of political parties — Whether applicants' leave application rightly dismissed

The first respondent ('ROS') had allowed a political party ('UMNO') an extension of time ('EOT') to hold its elections at all levels ('the decision'). The appellants, who were UMNO members at the material time, complained that the decision breached the party's constitution. Their efforts to get an explanation from ROS over the decision failed. The appellants applied to the High Court for leave to commence judicial review proceedings to, inter alia, quash the decision and compel ROS to provisionally dissolve UMNO and suspend all UMNO activities until the judicial review proceedings were completed. They also sought a declaration that all UMNO branches were no longer legal and all party divisions and its Supreme Council were dissolved effective from 20 April 2018. At the leave hearing, the Attorney General's Chambers raised the preliminary objection ('PO') that because s 18C of the Societies Act 1966 ('the SA') ousted the jurisdiction of the courts to hear any challenge to a decision of a political party or of any person authorised by its constitution or rules or regulations made thereunder on, inter alia, any matter relating to the affairs of the party, the High Court had no jurisdiction to hear the matter. The High Court upheld the PO and dismissed the leave application. In the instant appeal against the decision, the appellants contended that the High Court should have held the ouster clause in s 18C of the SA to be ineffective for being ultra vires art 121(1) of the Federal Constitution.

Held, dismissing the appeal and affirming the decision of the High Court:

(1) There was no error in the High Court judge's findings and application of relevant law to warrant appellate intervention. The High Court had rightly upheld the PO that pursuant to s 18C of the SA, the court had no jurisdiction to hear the matter (see paras 18 & 42).

(2) The reliefs sought by the appellants were not within the court's purview as they came within the ambit of s 18C of the SA in that they related to 'the interpretation of its constitution, rules or regulations or on any matter relating to the affairs of the party'. Parliament had expressly and in clear and unambiguous terms prohibited the courts from being entangled in disputes relating to the affairs of political parties and the reasons for taking that position was obvious (see para 27).

(3) This court was bound by the Federal Court's interpretation of the ambit and effect of s 18C of the SA with regard to matters concerning political parties in *Pendaftar Pertubuhan v Datuk Justin Jinggut* [2013] 3 MLJ 16. In that case, the Federal Court dealt specifically with the interpretation of s 18C of the SA and that was also the sole issue before the High Court in the instant case. In the cases relied upon by the appellants, s 18C was not the issue before the Federal Court and those cases were distinguishable from the instant case on the facts and issues. The facts and issues in the instant case relating to the effect of s 18C of the SA were clearly on point with the Federal Court's decision in *Justin Jinggut* and this court was therefore bound by the same (see paras 33–36 & 41).

[Bahasa Malaysia summary

Responden pertama ('ROS') telah membenarkan parti politik ('UMNO') lanjutan masa ('EOT') untuk mengadakan pilihan rayanya di semua peringkat ('keputusan tersebut'). Perayu-perayu, yang meruakan ahli-ahli UMNO pada masa matan, telah mengadu bahawa keputusan tersebut telah melanggar perlembagaan parti. Usaha mereka untuk mendapat penjelasan dari ROS berhubung keputusan tersebut telah gagal. Perayu-perayu telah memohon kepada Mahkamah Tinggi untuk kebenaran memulakan prosiding semakan kehakiman bagi, antara lain, membatalkan keputusan tersebut dan mendesak ROS untuk sementara membubarkan UMNO dan menangguhkan semua aktiviti UMNO sehingga proses semakan kehakiman selesai. Mereka juga memohon deklarasi bahawa semua cawangan UMNO tidak lagi sah dan semua parti bahagian dan Majlis Tertingginya dibubarkan berkuatkuasa dari 20 April 2018. Semasa perbicaraan kebenaran, Jabatan Peguam Negara membangkitkan bantahan awal ('PO') kerana s 18C Akta Pertubuhan 1966 ('AP') menolak bidang kuasa mahkamah untuk mendengar apa-apa cabaran kepada keputusan parti politik atau mana-mana orang yang diberi kuasa oleh perlembagaannya atau kaedah atau peraturan yang dibuat di bawahnya, antara lain, apa-apa perkara yang berkaitan dengan hal ehwal parti, Mahkamah Tinggi tidak mempunyai bidang kuasa untuk mendengar perkara itu. Mahkamah Tinggi mengekalkan PO tersebut dan menolak permohonan

kebenaran itu. Dalam rayuan terhadap keputusan tersebut, perayu-perayu berpendapat bahawa Mahkamah Tinggi sepatutnya memutuskan klausa penolakan dalam s 18C AP supaya tidak berkuat kuasa kerana ultra vires perkara 121(1) Perlembagaan Persekutuan.

Diputuskan, menolak rayuan dan mengesahkan keputusan Mahkamah Tinggi:

(1) Tiada kekhilafan dalam penemuan hakim Mahkamah Tinggi dan permohonan undang-undang berkaitan untuk mewajarkan campur tangan mahkamah rayuan. Mahkamah Tinggi dengan betul telah mengekalkan PO terebut menurut s 18C AP, mahkamah tidak mempunyai bidang kuasa untuk mendengar perkara itu (lihat perenggan 18 & 42).

(2) Relif-relif yang dipohon oleh perayu-perayu bukan dalam bidang kuasa mahkamah kerana ia dalam skop s 18C AP yang berkaitan 'the interpretation of its constitution, rules or regulations or on any matter relating to the affairs of the party'. Parlimen dalam istilah-istilah yang nyata dan jelas dan tidak taksa melarang mahkamah daripada terjebak dalam pertikaian yang berkaitan urusan parti politik dan sebab untuk mengambil pendekatan itu adalah jelas (lihat perenggan 27).

(3) Mahkamah ini terikat oleh pentafsiran Mahkamah Persekutuan berhubung skop dan kesan s 18C AP berkaitan perkara mengenai parti politik dalam kes in *Pendaftar Pertubuhan v Datuk Justin Jinggut* [2013] 3 MLJ 16. Dalam kes tersebut, Mahkamah Persekutuan memperkatakan khususnya tentang tafsiran s 18C AP dan itu juga merupakan satu-satunya isu di hadapan Mahkamah Tinggi dalam kes ini. Dalam kes-kes yang diguna pakai oleh perayu, s 18C bukanlah isu di hadapan Mahkamah Persekutuan dan kes-kes tersebut boleh dibezakan dengan kes ini berdasarkan fakta dan isu. Fakta dan isu dalam kes ini yang berkaitan dengan kesan s 18C AP jelas mengenai hal dengan keputusan Mahkamah Persekutuan dalam kes *Justin Jinggut* dan oleh sebab itu mahkamah ini terikat dengan yang sama (lihat perenggan 33–36 & 41).]

Cases referred to

Abdul Aziz bin Jamal Mohammad & Ors v Maniam KVS @ M Kayveas [1998] 5 MLJ 794, HC (refd)

Anina Saadudin v Datuk Seri Tengku Adnan Tengku Mansor & Anor [2015] MLJU 2372; [2016] 1 CLJ 266, HC (refd)

Indira Gandhi a/p Mutho v Pengarah Jabatan Agama Islam Perak & Ors and other appeals [2018] 1 MLJ 545; [2018] 3 CLJ 145, FC (distd)

Ismail bin Mohd & 1 Lagi lwn Zainul Abidin bin Mohamad Hashim & 3 Lagi [2013] MLJU 1647; [1994] 2 CLJ 201, HC (refd)

Pendaftar Pertubuhan Malaysia v PV Das (bagi pihak People's Progressive Party of

Malaysia (PPP)) (Datuk M Kayveas, intervener) [2003] 3 MLJ 449, CA (refd)
Pendaftar Pertubuhan v Datuk Justin Jinggut [2013] 3 MLJ 16; [2013] 2 CLJ 362, FC (folld)
PV Das v Maniam KVS Kayveas (Civil Suit No 22–72 of 1996) (unreported) (refd)
SI Rajah & Anor v Dato Mak Hon Kam & Ors [1993] 3 MLJ 741, HC (refd)
Semenyih Jaya Sdn Bhd v Pentadbir Tanah Daerah Hulu Langat and another case [2017] 3 MLJ 561, FC (distd)

Legislation referred to

Federal Constitution arts 13, 121, 121(1), (1A)
Land Acquisition Act 1960 ss 2, 36(4), 40D, 40D(1), (2), (3), 49(1)
Law Reform (Marriage and Divorce) Act 1976
Religion of Islam (Perak) Enactment 2004 ss 96, 106
Rules of Court 2012 O 53 r 3
Societies Act 1966 ss 13, 13(1)(c)(ix), (2), 14, 16, 16(1), 18C, 66

Appeal from: Appication for Judicial Review No WA-25–102–04 of 2018 (High Court, Kuala Lumpur)

Haniff Khatri (Nur Dalila Husna Azmi with him) (Haniff Khatri) for the appellant.
Shamsul Bolhassan (Senior Federal Counsel, Attorney General's Chambers) for the respondent.

Badariah Sahamid JCA (delivering judgment of the court):

INTRODUCTION

[1] This is an appeal against the decision of the learned High Court judge at Kuala Lumpur who dismissed the appellants' judicial review application on a preliminary objection of the respondents that the High Court has no jurisdiction to hear the matter in the light of the specific provision of s 18C of the Societies Act 1966 ('Act 355').

BACKGROUND FACTS

[2] The first appellant is a registered member of United Malaya National Organisation ('UMNO'), a political party. He was also the UMNO Branch Chief appointed since 2013 at Cawangan Seri Merpati Pandan Indah. The second to the 16th appellants are registered ordinary members of UMNO at specific UMNO branches.

[3] The 16 appellants had sought leave to commence judicial review

proceedings under O 53 r 3 of the Rules of Court 2012 to challenge the decision of the Registrar of Societies ('ROS') made pursuant to the Act 355.

[4] In the notice of application for judicial review, the appellants had sought the following reliefs:

(a) a certiorari to quash the decision of the ROS which allowed an extension of time for UMNO's elections at all levels;

(b) a mandamus order to compel ROS to provisionally dissolve UMNO and for ROS to suspend all UMNO activities until the judicial review is completed;

(c) a mandamus order to compel ROS to carry out its duty under ss 13, 14, 16, 66 of Act 355 to conduct an investigation or give written feedback on the letters addressed to it; and

(d) a declaration to cease the legality of UMNO branches and dissolution of all-party divisions and the UMNO Supreme Council effective 20 April 2018.

[5] The grounds relied on to support the above reliefs as stated in the affidavit was that the UMNO Supreme Council had breached article 10.16 of UMNO's Constitution in delaying the party's elections.

[6] The appellants averred that the extension of time purportedly approved by the ROS had exceeded the time permitted by the UMNO Constitution itself.

[7] The ROS which allowed an extension of time for UMNO's election at all levels had failed to give written feedback or take any action on the issue raised after the complaint or request for explanation was addressed to the ROS by the appellants.

PROCEEDINGS BEFORE THE HIGH COURT

[8] At the hearing for the appellants' leave application for judicial review, the senior federal counsel ('SFC') representing the Attorney General's Chambers ('AGC') had submitted that the High Court has no jurisdiction to hear the matter because of s 18C of Act 355 which ousts the jurisdiction of the courts from determining the matter.

[9] The appellants argued to the contrary. The appellants contended that the High Court has jurisdiction to review the matter even in the face of s 18C of Act 355. In support of the above contention, reference was made to two recent Federal Court decisions which upheld the power of the courts to exercise

supervisory jurisdiction, safeguarded by constitutional provisions to ensure judicial independence. The two Federal Court decisions referred to were: *Indira Gandhi a/p Mutho v Pengarah Jabatan Agama Islam Perak & Ors and other appeals* [2018] 1 MLJ 545; [2018] 3 CLJ 145 and *Semenyih Jaya Sdn Bhd v Pentadbir Tanah Daerah Hulu Langat and another case* [2017] 3 MLJ 561.

[10] In reply the learned SFC submitted that the two Federal Court cases of *Indira Gandhi* and *Semenyih Jaya* can be distinguished as these two cases are not in relation to political parties and s 18C of Act 355 was not an issue in either case. *Indira Gandhi*'s case was in relation to an administrative decision declared to be final by a governing statute, while the court in *Semenyih Jaya* was deciding on a land reference matter.

FINDINGS AND DECISION OF THE HIGH COURT

[11] The learned High Court judge had determined that the issue before the court is whether s 18C of Act 355 ousts the jurisdiction of the High Court to hear the matter.

[12] The learned High Court judge agreed with the submissions of the learned SFC that the High Court has no jurisdiction to hear the matter in the light of s 18C of Act 355. In support of the contention, reference was made to the Federal Court case of *Pendaftar Pertubuhan v Datuk Justin Jinggut* [2013] 3 MLJ 16; [2013] 2 CLJ 362, the Court of Appeal decision in the case of *Pendaftar Pertubuhan Malaysia v PV Das (bagi pihak People's Progressive Party of Malaysia (PPP)) (Datuk M Kayveas, intervener)* [2003] 3 MLJ 449 as well as the High Court decision of *Anina Saadudin v Datuk Seri Tengku Adnan Tengku Mansor & Anor* [2015] MLJU 2372; [2016] 1 CLJ 266.

[13] The applicants/appellants leave application was dismissed by the learned High Court judge with no order as to costs. In His Lordship's grounds of judgment at paras 22–23, His Lordship had stated the reasons as follows:

> 22. Though I have considered both *Indira Gandhi* and *Semenyih Jaya* cases relied on by the learned counsel for the applicants, those cases in my view can be distinguished from the present application. There, the Federal Courts in general term reminded the stake holders that judicial power may only be vested in courts, safeguarded by constitutional provisions to ensure judicial independence and judicial independence and the separation of powers are recognized as features in the basic structure of the Constitution. The cases are not dealing with decisions of a political party on any matter relating to the affairs of the party within s 18C. I cannot ignore the Federal Court decision in *Pendaftar Pertubuhan v Datuk Justin Jinggut*, that s 18C of the Act clearly excludes the jurisdiction of the courts from going into the merits of any disputes between members of a political party.
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> 23. Effect must be given to the intention of Parliament in legislating s 18C of the Societies Act 1966. In s 18C Parliament did not stop at the words, 'shall be final and

conclusive and ...; shall not be challenged, appealed against, reviewed, quashed or called in question in any court'. It went further to provide '...; on any ground, and no court shall have jurisdiction to entertain or determine any suit, application, question or proceeding on any ground regarding the validity of such decision'. These words clearly show that Parliament intended to exclude the jurisdiction of the courts.

MEMORANDUM OF APPEAL

[14] In the memorandum of appeal, the appellants had raised the following grounds:

(a) the learned High Court judge had erred in law in His Lordship's finding that s 18C of Act 355 applies to the facts of this case as any ouster clause similar to s 18C of Act 355 which seeks to exclude the jurisdiction of the courts is ultra vires art 121(1) of the Federal Constitution; and

(b) the learned High Court judge had erred in His Lordship's failure to abide by the principle of stare decisis in that he did not take into account two recent Federal Court decisions on the invalidity of ouster clauses like s 18C of Act 355. The two Federal Court decisions are: *Semenyih Jaya Sdn Bhd v Pentadbir Tanah Daerah Hulu Langat and another case* [2017] 3 MLJ 561; and *Indira Gandhi a/p Mutho v Pengarah Jabatan Agama Islam Perak & Ors and other appeals* [2018] 1 MLJ 545.

THE APPELLANTS' SUBMISSIONS

[15] The primary argument raised by the appellants before us is that the learned High Court judge, in giving effect to s 18C of Act 355 to exclude the jurisdiction of the courts in matters relating to disputes between members of political parties had decided in contravention of art 121(1) of the Federal Constitution.

Article 121(1) of the Federal Constitution provides as follows:

121 Judicial power of the Federation

(1) There shall be two High Courts of co-ordinate jurisdiction and status namely —

(a) one in the states of Malaya, which shall be known as the High Court in Malaya and shall have its principal registry at such place in the States of Malaya as the Yang di-Pertuan Agong may determine;

(b) one in the states of Sabah and Sarawak, which shall be known as the High Court in Sabah and Sarawak and shall have its principal registry at such place in the States of Sabah and Sarawak as the Yang di-Pertuan Agong may determine; and

(c) repealed and such inferior courts as may be provided by federal law;

A and the High Courts and inferior courts shall have such jurisdiction and powers as may be conferred by or under federal law.

B **[16]** The appellants argued that the abovementioned constitutional provision recognises the power of civil courts to review the decision of any authority to prevent any abuse of power by such authority. Thus, it was asserted that the power of the civil courts under art 121(1) of the Federal Constitution is inextricably intertwined with their constitutional role as a check and balance mechanism. In support of the above, reference was made to the recent Federal Court decision of *Semenyih Jaya Sdn Bhd v Pentadbir Tanah Daerah Hulu Langat and another case* [2017] 3 MLJ 561. In addition, the appellants referred to the recent Federal Court decision of *Indira Gandhi a/p Mutho v Pengarah Jabatan Agama Islam Perak & Ors and other appeals* [2018] 1 MLJ 545 which had approved of the principle stated in the *Semenyih Jaya*.

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D **[17]** Thus, the appellants submitted that the learned High Court judge had erred in law in dismissing the application of judicial review by the appellants on the basis of s 18C of Act 355, when s 18C can be construed as ultra vires art 121(1) of the Federal Constitution.

E OUR DECISION

[18] We have carefully considered the oral and written submissions of counsels as well as the appeal records. We are of the unanimous view that there F was no error in the learned High Court judge's findings and application of relevant law to warrant appellate intervention. We therefore affirmed the decision of the learned High Court judge and dismissed this appeal with costs. We give our reasons for doing so below.

G **[19]** The appellants were members of UMNO, a political party before their expulsion from UMNO prior to the hearing for the leave for judicial review. The appellants contended that the UMNO Supreme Council had breached article 10.16 of UMNO's Constitution in delaying the party's election. The appellants had challenged the decision of the ROS which had allowed an H extension of time for UMNO to hold its elections at all levels. The appellants filed an application for judicial review, inter alia, for an order of certiorari to quash the decision of the ROS which allowed an extension of time for UMNO to carry out its elections at all levels.

I **[20]** The primary argument raised by learned counsel for the respondent is that the High Court has no jurisdiction to hear the matter because of the express provision of s 18C of Act 355 which ousts the jurisdiction of the courts to challenge the decision of a political party or any person authorised by its constitution or rules or regulations in matters relating to the affairs of the party.

[21] Section 18C of Act 355 provides as follows:

> 18C The decision of a political party or any person authorized by its constitution or rules or regulations made thereunder on the interpretation of its constitution, rules or regulations or *on any matter relating to the affairs of the party shall be final and conclusive and such decision shall not be challenged, appealed against, reviewed, quashed or called in question in any court on any ground, and no court shall have jurisdiction to entertain or determine any suit, application, question or proceeding on any ground regarding the validity of such decisions.* (Emphasis added.)

[22] The interpretation of s 18C of Act 355 was considered at length by the Court of Appeal in the case of *Pendaftar Pertubuhan Malaysia v PV Das (bagi pihak People's Progressive Party of Malaysia (PPP)) (Datuk M Kayveas, intervener)* [2003] 3 MLJ 449. In that case, the respondent, PV Das suing on behalf of himself and also purportedly on behalf of PPP, had brought a suit against the Registrar of Societies (ROS), and prayed for, inter alia, declarations that the registrar's recognition of Datuk M Kayveas ('Kayveas') as the president of the PPP and his supporters as office bearers was unlawful and ultra vires the Act 355 and PPP's Constitution; and all approvals given by the ROS to Kayveas and his supporters in respect of the change of address of the headquarters of PPP, formation of branches, change of logo, change of name of PPP and amendment of PPP's constitution were all illegal, ultra vires the Act 355 and PPP'S Constitution.

[23] The High Court had allowed the respondent's claim. The registrar appealed. The Court of Appeal allowed the registrar's appeal. Abdul Hamid Mohamad JCA (as he then was) examined the ambit of s 18C of Act 355 in comparison to similar ouster clauses in other legislations. His Lordship (at p 455) had stated as follows:

> The first thing to be observed is that this section applies only to political parties. Secondly, the words used are more exhaustive than those used in other similar provisions. For examples, in s 33(4) of the Election Offences Act 1954 the words 'shall be final' are used. In s 41 of the same Act, the words 'shall not be questioned' are used. In s 37(6) of the Extradition Act 1992, the words 'shall be final and conclusive, and shall not be challenged, appeal against, reviewed, quashed or called in question in any court' are used. This section was inserted by Act A484 and came into force on 30 May 1980.

[24] His Lordship Abdul Hamid JCA (at p 458) had added as follows:

> ... Ten years later, Parliament found it necessary to legislate s 18C. Having learnt from the experience regarding the ineffectiveness of the wording used in s 33C, Parliament had come up with a new formula. It did not stop at the words 'shall be final and conclusive, and shall not be challenged appealed against, reviewed quashed or called in question in any court'. It went further to provide '... on any ground, and no court shall have jurisdiction to entertain or determine any suit, application, question or proceeding or any ground regarding the validity of such decision'.

[25] Abdul Hamid Mohamad JCA had also observed that at least five High Court judges had consistently expressed the same view on the interpretation of s 18C of Act 355, ie the court has no jurisdiction to question the validity of decisions of a political party relating to the affairs of the party. The five High Court cases referred to by His Lordship in the *Kayveas* case abovementioned (unfortunately, as His Lordship had noted, at that time there were no decisions of a court higher than the High Court on s 18C of Act 355), were namely: *SI Rajah & Anor v Dato Mak Hon Kam & Ors* [1993] 3 MLJ 741; *Ismail bin Mohd & 1 Lagi lwn Zainul Abidin bin Mohamad Hashim & 3 Lagi* [2013] MLJU 1647; [1994] 2 CLJ 201; *PV Das v Maniam KVS Kayveas* (Civil Suit No 22–72 of 1996) (unreported); *Abdul Aziz bin Jamal Mohammad & Ors v Maniam KVS @ M Kayveas* [1998] 5 MLJ 794 and Md Raus J's unreported judgment in Civil Suit No 22–21 of 1997). His Lordship agreed with the position taken in the five High Court judgments abovementioned that effect must be given to the intention of Parliament in legislating s 18C of Act 355 to keep issues relating to the affairs of political parties outside the purview of the courts.

[26] Abdul Hamid Mohamad JCA (as he then was) had considered the facts of the *Kayveas* case before him in the light of s 18C of Act 355 and added as follows:

> We shall now consider the provision of s 18C in the light of this case. The suit is against the Registrar of Societies. The first prayer concerns the act of the registrar in recognising Datuk M Kayveas as president and his supporters as office bearers of the party. The second prayer seeks a declaration by the court that the plaintiff and his supporters are the president and office bearers of the party, respectively. The third prayer seeks a declaration that the approval by the registrar of the change of address etc are void. The fourth prayer is for a declaration regarding the address of the headquarters of the party. ... All these arise from the dispute regarding the validity of the Extra Ordinary Delegates Conference, the election of Datuk M Kayveas and his supporters as president and office bearers respectively, the validity of the voting done and the resolutions passed and also who are members and who are not. These in our views are 'decision(s) of a political party on any matter relating to the affairs of the party' ...

[27] Similarly, in the facts of the instant case, the appellants had sought, inter alia, for the following reliefs: a certiorari to quash the decision of the Registrar of Societies ('ROS') which allowed an extension of time for UMNO's elections at all levels; a mandamus order to compel ROS to provisionally dissolve UMNO and for ROS to suspend all UMNO activities until the judicial review is completed and a declaration to cease the legality of UMNO branches and dissolution of all party divisions and the UMNO Supreme Council effective 20 April 2018. The above reliefs sought are not within the court's purview as they come within the ambit of s 18C of Act 355 in that they relate to, 'the interpretation of its constitution, rules or regulations or on any matter relating

to the affairs of the party'. Parliament has expressly and in clear and unambiguous terms prohibited courts from being entangled in disputes relating to the affairs of political parties, and the reasons for taking that position is obvious and needs no further elaboration.

[28] The Federal Court in the case of *Pendaftar Pertubuhan v Datuk Justin Jinggut* [2013] 3 MLJ 16; [2013] 2 CLJ 362, had approved the decision of the Court of Appeal in the *Kayveas* case. In *Justin Jinggut* case, a leadership crisis arose in Parti Kebangsaan Sarawak ('SNAP'), a political society registered under the Act 355 between two groups, one led by the President and the other led by the Deputy President. The issue arose when the Deputy President, during the absence of the President, called for a Central Executive Committee ('CEC') meeting and subsequently convened the National Council Meeting. The President subsequently suspended the Deputy President and the decision was confirmed by another CEC meeting.

[29] The crisis led to the issuance of a notice by the Registrar of Societies ('ROS') under s 16(1) of Act 355, which, inter alia, stated that the ROS was of the opinion that a dispute had occurred among the office bearers of SNAP, as a result of which he was not satisfied as to the identities of the persons who had been properly constituted as the office bearers of SNAP. The ROS subsequently issued another notice, under s 13(2) of Act 355, where a notification on his proposal to cancel the registration of SNAP was given unless SNAP could furnish reasons within a month why it should not be de-registered. Upon the failure by the parties to settle its crisis, the ROS issued his decision to cancel the registration of SNAP under s 13(1)(c)(ix) of Act 355.

[30] The President and the respondent filed an application to the High Court for: (i) an order of certiorari to quash the decision of the ROS in cancelling the registration of SNAP; and (ii) a declaration that the decision of the ROS in cancelling the registration of SNAP was void and of no effect. The respondent's application was dismissed by the High Court. However, the respondent's appeal to the Court of Appeal was allowed and the decision of the High Court was set aside.

[31] The ROS had appealed to the Federal Court on the following questions of law, inter alia: (i) whether the ROS had any power under s 16(1) of Act 355 to determine the validity of the meetings before he decided that a dispute had arisen pertaining to the identity of the office bearers; (ii) whether the court, having considered the facts of the case objectively, could decide that there was no dispute pertaining to the identity of the office bearers to enable the ROS to issue a notice under s 16(1) of Act 355; (iii) whether under s 16 read with s 13(2) of Act 355, the ROS needed to act mechanically or whether he had any discretion to cancel the registration of a society if the condition in s 16(1) had

not been satisfied; and (iv) whether, under s 16 read with s 13 of Act 355, the ROS was required to give any reasons for his decision to cancel the registration of a society.

[32] The Federal Court allowed the registrar's appeal and agreed with the Court of Appeal in *Pendaftar Pertubuhan Malaysia v PV Das (bagi pihak People's Progressive Party of Malaysia (PPP)) (Datuk M Kayveas, intervener)* that in legislating s 18C of Act 355 Parliament had clearly intended to exclude the jurisdiction of the courts in respect of decisions of political parties on any matter relating to the affairs of a political party. Abdul Hamid Embong FCJ had stated (at para 37) as follows:

> [37] We agree with the learned senior federal counsel, for the ROS who submitted that, in any event, s 18C of the Act clearly excludes the jurisdiction of the courts from going into the merits of any disputes between members of a political party. Section 18C states that:
>
> > 18C Decision of political party to be final and conclusive
> >
> > The decision of a political party or any person authorized by it or by its constitution or rules or regulations made thereunder on the interpretation of its constitution, rules or regulations or on any matter relating to the affairs of the party shall be final and conclusive and such decision shall not be challenged, appealed against, reviewed, quashed or called in question in any court on any ground, and *no court shall have jurisdiction to entertain or determine any suit, application, question or proceeding on any ground regarding the validity of such decision.* (Emphasis added.)
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> So clearly the court is restrained from questioning the decisions made by the disputing parties of a political party at their respective meetings. The concluding phrase in s 18C as we underscored above was considered by the Court of Appeal in *Pendaftar Pertubuhan Malaysia v PV Das (bagi pihak People's Progressive Party of Malaysia (PPP)) (Datuk M Kayveas, intervener)* [2003] 3 MLJ 449, where the court, with which we agree, held that:
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> > [1] Effect must be given to the intention of Parliament in legislating s 18C of the Societies Act 1966. In s 18C, Parliament did not stop at the words 'shall be final and conclusive and ... shall not be challenged, appealed against, reviewed, quashed or called in question in any court'. It went further to provide '... on any ground, and no court shall have jurisdiction to entertain or determine any suit, application, question or proceeding on any ground regarding the validity of such decision'. These words clearly show that Parliament intended to exclude the jurisdiction of the courts. Also, the dispute regarding the validity of the Extra Ordinary Delegates Conference, the election of Datuk M Kayveas and his supporters as President and Office Bearers respectively, the validity of the voting done and the resolutions passed etc. were decisions of a political party on any matter relating to the affairs of the party within s 18C.

[33] With the clear endorsement by the Federal Court in *Justin Jinggut* on

the interpretation of s 18C of Act 355 by the Court of Appeal in *Pendaftar Pertubuhan Malaysia v PV Das (bagi pihak People's Progressive Party of Malaysia (PPP)) (Datuk M Kayveas, intervener)*, the issue of whether s 18C of Act 355 excludes the jurisdiction of the courts in matters relating to political parties is laid to rest by the principle of stare decisis. Thus, we are bound by the Federal Court's interpretation of the ambit and effect of s 18C of Act 355.

[34] Learned counsel for the appellants have raised the same principle of stare decisis in respect of the Federal Court decisions of *Semenyih Jaya Sdn Bhd v Pentadbir Tanah Daerah Hulu Langat and another case* [2017] 3 MLJ 561 and *Indira Gandhi a/p Mutho v Pengarah Jabatan Agama Islam Perak & Ors and other appeals* [2018] 1 MLJ 545. Learned counsel for the qppellants have also urged this court to review the Federal Court decision of *Justin Jinggut* in the light of more recent Federal Court decisions of *Semenyih Jaya* and *Indira Gandhi*. Our response is as follows. The Federal Court case of *Justin Jinggut* deals specifically with the issue of the interpretation of s 18C of Act 355, which was the sole issue before the High Court in the instant case. The instant case can be distinguished clearly on the facts as well as the issues raised and determined by the Federal Court in both the cases of *Indira Gandhi* and *Semenyih Jaya*.

[35] It is worthy of note than in both *Indira Gandhi* and *Semenyih Jaya*, s 18C of Act 355 was not referred to for the reason that it was not the issue before the respective Federal Court. In both the cases abovementioned, the Federal Court did not refer to its own decision in *Justin Jinggut*. Thus, the Federal Court's interpretation of *Justin Jinggut* which referred and approved of the Court of Appeal's decision in the *Kayveas* case must remain good law and in accordance with the principle of stare decisis, binds this court.

[36] As was stated earlier, the facts and issues raised in the instant case can be distinguished from *Semenyih Jaya* and *Indira Gandhi*. *Semenyih Jaya* was a land reference matter in which one of the issues before the court was the interpretation of s 40D(3) of the Land Acquisition Act 1960 ('the LAA') and the proviso to s 49(1) of the LAA. Section 40D(3) was a finality clause that barred any appeal against a decision made under s 40D(1) and (2) while the proviso to s 49(1) stated that a decision against an award of compensation was non-appealable. The issues raised before the Federal Court was the constitutionality of s 40D and the proviso to s 49(1) in view of arts 121 and 13 of the Federal Constitution.

[37] The Federal Court had held that s 40D of the LAA to be ultra vires the Constitution and was thus struck down. By virtue of art 121(1) of the Federal Constitution, the power to award compensation in land reference proceedings was a judicial power that was vested in the High Court judge sitting in the land reference court. This was fortified by the provisions of ss 36(4) and 2 of the

LAA. It imposed on the land administrator the right to refer to the High Court judge who was seized with judicial power to adjudicate. Thus, the decision in *Semenyih Jaya* was specifically an interpretation of relevant provisions of the LAA in the light of arts 121(1) and 13 of the Federal Constitution.

[38] In *Indira Gandhi*'s case, Indira Gandhi a/p Mutho ('the wife') and one Pathmanathan a/l Krishnan ('the husband') contracted a civil marriage under the Law Reform (Marriage and Divorce) Act 1976 ('the LRA'). There were three children from the marriage. On 11 March 2009, the husband converted to Islam. After the conversion, the husband obtained a custody order of the three children from the Syariah High Court. Sometime in April 2009, the wife received certificates of conversion showing that the Registrar of Muallaf ('the registrar') had registered the three children as Muslims. The wife then filed an application for judicial review challenging the decision of the registrar on the grounds that the registrar had acted in breach of the procedure set out in ss 96 and 106 of the Religion of Islam (Perak) Enactment 2004 and that the certificates issued were void.

[39] The threshold question before the Federal Court in *Indira Gandhi* was on the issue of jurisdiction and framed as follows:

> Whether The High Court has the exclusive jurisdiction pursuant to sections 23, 24 and 25 and the Schedule of the Courts of Judicature Act 1964 (read together with Order 53 of the Rules of Court 2012) and/or its inherent jurisdiction to review the actions of the Registrar of Muallafs or his delegate acting as public authorities in exercising statutory powers vested by the Administration of the Religion of Islam (Perak) Enactment?

[40] One of the primary issues raised in *Indira Gandhi*'s case was the interpretation of art 121(1A) of the Federal Constitution, in particular whether the clause had the effect of granting exclusive jurisdiction to the Syariah Courts in all matters of Islamic law including those relating to judicial review. It was held that the jurisdiction of the civil courts could not be excluded as the issue does not involve the interpretation of any Islamic law or principles but the legality and constitutionality of administrative action taken by the registrar in the exercise of his statutory powers.

[41] Thus, while the facts and issues and determination by the Federal Court cases of *Semenyih Jaya* and *Indira Gandhi* are similar and consistent with each other, both the aforesaid cases are distinguishable from the instant case. It is clear that the facts and issues in the instant case which relates to the effect of s 18C of Act 355 are clearly on point with the Federal Court's decision in *Justin Jinggut* and this court is therefore bound by the same.

[42] In conclusion, we found no reason to depart from the findings and decision of the learned High Court judge on the issue of the jurisdiction of the High Court. We therefore upheld the preliminary objection of the respondent that pursuant to s 18C of Act 355, the High Court has no jurisdiction to hear the matter. Accordingly, we dismissed the appeal with no order as to costs.

Appeal dismissed and the decision of the High Court affirmed.

Reported by Ashok Kumar